

U.S.C. § 605(b), there will not be a significant economic impact on a substantial number of small business entities resulting from the interim rules established in this Report and Order. These rules, adopted in the *Second Order on Reconsideration*, will remain in place until the new rules become effective. We find that the interim rules, while not optimal, have, as a practical matter, worked reasonably well, and we have no reason to believe that small businesses would be burdened by a brief continuation of these rules during a transition period. Additionally, in the absence of interim rules, it is likely that the industry would nevertheless continue to follow the rules adopted in the *Second Order on Reconsideration* pursuant to their existing contracts. Moreover, it would be burdensome to adopt a third set of rules that would be effective for only a brief interim period. Thus, we adopt interim rules to ensure that PSPs continue to receive compensation during the transition period.

60. The Commission will send a copy of this final certification, along with this Report and Order, in a report to Congress pursuant to the Congressional Review Act,¹⁶⁷ and to the Chief Counsel for Advocacy of the Small Business Administration.¹⁶⁸ A copy of this certification will be published in the Federal Register.¹⁶⁹

61. *Final Rules.* As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Federal Register summary of the *Further Notice*.¹⁷⁰ The Commission sought written public comments on the proposals in the *Further Notice*, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.¹⁷¹

1. Need for, and Objectives of, the Rules

62. *Final Rules.* This Order fulfills the commitment the Commission undertook in the *Further Notice* to examine the need to amend our payphone compensation rules, and responds to a court remand of an earlier attempt by the Commission to remedy problems with the rules. Specifically, this Order adopts new payphone compensation rules that place liability on the facilities-based long distance carriers (SBRs)¹⁷² to compensate PSPs for payphone-originated calls that are completed on that facilities-based long distance carrier's platform. The Order also establishes a payment mechanism for SBRs to compensate PSPs for this liability. To satisfy its compensation liability to PSPs, the new rules require SBRs to: (1) establish their own call

¹⁶⁷ 5 U.S.C. § 801 (a)(1)(A).

¹⁶⁸ 5 U.S.C. § 605(b).

¹⁶⁹ *Id.*

¹⁷⁰ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking, 18 FCC Rcd 11003 (2003) (*Further Notice*).

¹⁷¹ See 5 U.S.C. § 604.

¹⁷² See para. 1, n.1 *supra*.

tracking system; (2) have a third party attest that the system accurately tracks payphone calls to completion; and (3) pay PSPs directly based on the SBR's own call tracking data. Moreover, the rules require other facilities-based long distance carriers in the call path, if any, to provide reports to PSPs of payphone-originated calls switched to another facilities-based carrier's platform.

63. The overall objective of this Report and Order is to ensure that PSPs receive fair per-call compensation pursuant to section 276 of the Act. In this regard, the new rules ensure that PSPs are "fairly compensated" for all SBR completed calls made from their payphones, and satisfy section 276 of the Act, by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

64. There were no comments raised that specifically addressed the in the IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities (as discussed in paragraphs 20-21) in order to reduce the economic impact of the rules enacted herein on such entities.

3. Description and Estimate of the Number of Small Entities to Which the Actions Taken Will Apply

65. *Final Rules.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.¹⁷³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁷⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁷⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁷⁶

66. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition of small providers of incumbent local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers.

¹⁷³ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

¹⁷⁴ *Id.* § 601(6).

¹⁷⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

¹⁷⁶ *Id.* § 632.

Under that SBA definition, such a business is small if it has 1,500 or fewer employees.¹⁷⁷ According to the most recent *Telephone Trends Report* data, 1,335 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.¹⁷⁸ Of these 1,335 carriers, 1,037 reported that they have 1,500 or fewer employees and 298 reported that, alone or in combination with affiliates, they have more than 1,500 employees.¹⁷⁹ We do not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 1,037 or fewer providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

67. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition for small providers of competitive local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.¹⁸⁰ According to the Commission's *Telephone Trends Report* data, 349 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.¹⁸¹ Of these 349 companies, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees.¹⁸² The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of competitive local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 297 providers of competitive local exchange service are small entities that may be affected by the rules.

68. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access providers (CAPS). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.¹⁸³ According to the Commission's most recent *Telephone Trends Report* data, 349 CAPs or competitive local exchange carriers and 60 other local exchange carriers reported that they were

¹⁷⁷ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁷⁸ Telephone Trends Report, Table 5.3.

¹⁷⁹ *Id.*

¹⁸⁰ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁸¹ Telephone Trends Report, Table 5.3.

¹⁸² *Id.*

¹⁸³ 13 C.F.R. § 121.201, NAICS code 517110.

engaged in the provision of either competitive access provider services or competitive local exchange carrier services.¹⁸⁴ Of these 349 competitive access providers and competitive local exchange carriers, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees.¹⁸⁵ Of the 60 other local exchange carriers, 56 reported that they have 1,500 or fewer employees and 4 reported that, alone or in combination with affiliates, they have more than 1,500 employees.¹⁸⁶ Consequently, the Commission estimates that there are 297 or fewer small entity CAPS and 56 or fewer other local exchange carriers that may be affected by the rules.

69. *Local Resellers.* SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.¹⁸⁷ According to the Commission's most recent *Telephone Trends Report* data, 87 companies reported that they were engaged in the provision of local resale services.¹⁸⁸ Of these 87 companies, 86 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees.¹⁸⁹ Consequently, the Commission estimates that there are 86 or fewer local resellers that may be affected by the rules.

70. *Toll Resellers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.¹⁹⁰ According to the Commission's most recent *Telephone Trends Report* data, 454 companies reported that they were engaged in the provision of toll resale services.¹⁹¹ Of these 454 companies, 423 reported that they have 1,500 or fewer employees and 31 reported that, alone or in combination with affiliates, they have more than 1,500 employees.¹⁹² Consequently, the Commission estimates that there are 423 or fewer toll resellers that may be affected by the rules.

71. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to payphone service providers (PSPs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers.

¹⁸⁴ Telephone Trends Report, Table 5.3.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁸⁸ Telephone Trends Report, Table 5.3.

¹⁸⁹ *Id.*

¹⁹⁰ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁹¹ Telephone Trends Report, Table 5.3.

¹⁹² *Id.*

Under that SBA definition, such a business is small if it has 1,500 or fewer employees.¹⁹³ According to the Commission's most recent *Trends in Telephone Service* data, 758 PSPs reported that they were engaged in the provision of payphone services.¹⁹⁴ Of these 758 payphone service providers, 755 reported that they have 1,500 or fewer employees and 3 reported that, alone or in combination with affiliates, they have more than 1,500 employees.¹⁹⁵ Consequently, the Commission estimates that there are 755 or fewer PSPs that may be affected by the rules.

72. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.¹⁹⁶ According to the most recent *Telephone Trends Report* data, 204 carriers reported that their primary telecommunications service activity was the provision of interexchange services.¹⁹⁷ Of these 204 carriers, 163 reported that they have 1,500 or fewer employees and 41 reported that, alone or in combination with affiliates, they have more than 1,500 employees.¹⁹⁸ Consequently, we estimate that there are 163 or fewer small entity IXCs that may be affected by the rules.

73. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to operator service providers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.¹⁹⁹ According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services.²⁰⁰ Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees.²⁰¹ Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

74. Prepaid Calling Card Providers. The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition,

¹⁹³ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁹⁴ Telephone Trends Report, Table 5.3.

¹⁹⁵ *Id.*

¹⁹⁶ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁹⁷ Telephone Trends Report, Table 5.3.

¹⁹⁸ *Id.*

¹⁹⁹ 13 C.F.R. § 121.201, NAICS code 517110.

²⁰⁰ Telephone Trends Report, Table 5.3.

²⁰¹ *Id.*

such a business is small if it has 1,500 or fewer employees.²⁰² According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of prepaid calling cards.²⁰³ Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees.²⁰⁴ Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

75. *Final Rules.* The new rules we adopt will enable a PSP to identify SBRs that are not compensating it and to challenge the payments in instances where the PSP may believe that the data provided by other facilities-based long distance carriers are out of proportion to the data provided by the final SBR in the call path.²⁰⁵ The new rules will have no adverse impact on small carriers. Specifically, the new rules contain reporting obligations for an "intermediate carrier" (defined as any facilities-based long distance carrier in the call path that switches coinless payphone calls to another facilities-based long distance carrier). The new rules require each "intermediate carrier" to maintain, and provide to the PSP, a quarterly report that includes, for each facilities-based long distance carrier to which the intermediate carrier switched a toll-free or access code call: (1) a list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls; (2) a list of all the toll-free and access code numbers that all LECs have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carriers; (3) the volume of calls for each toll-free and access code number, e.g., "800" and "888" numbers, that the Intermediate Carrier has received from each of that PSP's payphones, identified by their ANIs, and switched to the facilities-based long distance carrier; and (4) the name, address, telephone number and other identifying information for the person or persons for each of the facilities-based long distance carriers that serve as the Intermediate Carrier's contact at each listed facilities-based long distance carrier.

76. Our rules also require a "completing carrier" (defined as an interexchange carrier, a switch-based long distance reseller, or a local exchange carrier that completes a coinless access code or subscriber toll-free payphone call) to establish a call-tracking system, subject to an auditing requirement to ensure accuracy, to track coinless access code or subscriber toll-free payphone calls to completion, and to compensate the PSP for these calls on a quarterly basis. The completing carrier also must submit quarterly reports to the PSP, which must include the following information: (1) a list of the toll-free and access numbers dialed from each payphone and the ANI for each payphone; (2) the volume of calls for each listed number that the

²⁰² 13 C.F.R. § 121.201, NAICS code 517110.

²⁰³ Telephone Trends Report, Table 5.3.

²⁰⁴ *Id.*

²⁰⁵ See *supra* para. 52.

completing carrier completed; (3) the name, address, and phone number of the person or persons responsible for handling the completing carrier's payphone compensation; and (4) the carrier identification code of all facilities-based long distance carriers that routed calls to the SBR.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

77. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁰⁶

78. The new rules impose a minimal burden on the facilities-based long distance carrier to compensate PSPs for all calls that are completed on that facilities-based carrier's platform. As the record indicates, facilities-based long distance carriers in the call path already collect the data necessary to comply with these reporting requirements as part of their own call tracking and billing systems.²⁰⁷ Thus, we do not impose any new collecting responsibilities, and we find that the additional reporting obligations the new rules impose are minimal in nature.²⁰⁸ Furthermore, the facilities-based long distance carrier that does not wish to establish its own call tracking system may nevertheless enter into private contractual arrangements with other parties, outside of the established rules. Moreover, the rules established herein provide carriers with ample time in which to establish a verifiable call tracking system. We also note that, to the extent that a PSP affirmatively declines the need for such information, the PSP is free to negotiate alternative arrangements with the relevant carriers.²⁰⁹ Last, the new rules will benefit PSPs, many of which may be small businesses, because they give PSPs greater means to pursue payment from carriers that switch their payphone calls.²¹⁰

D. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

79. None.

²⁰⁶ 5 U.S.C. § 603(c)(1)-(4).

²⁰⁷ See *supra* para. 53.

²⁰⁸ See *supra* para. 53.

²⁰⁹ See *supra* para. 53.

²¹⁰ See *supra* para. 52.

80. **Report to Congress:** The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²¹¹ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.²¹²

V. ORDERING CLAUSES

81. Accordingly, pursuant to authority contained in sections 1, 4, 201-205, 215, 218-220, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154, 201-205, 215, 218-220, 226, and 276, IT IS ORDERED that the policies, rules, and requirements set forth herein ARE ADOPTED.

82. IT IS FURTHER ORDERED that part 64 of the Commission's rules, 47 C.F.R. Part 64, IS AMENDED by revising sections 64.1300(a) and (b), 64.1310(a), (b), (c), and (g), and 64.1320(a), (b), (c), (d), (e), (f), and (g), as set forth in Appendix C of this Report and Order.

83. IT IS FURTHER ORDERED that for good cause found above, the interim rules set forth in Appendix B ARE EFFECTIVE upon their publication in the Federal Register and that the portions of this Report and Order pertinent to them are effective at the same time.

84. IT IS FURTHER ORDERED that the remainder of this Report and Order and the rules set forth in Appendix C ARE EFFECTIVE on the first day of the first calendar-year quarter following approval by the Office of Management and Budget of the information collections contained herein. The Commission will publish a document in the Federal Register announcing the effective date of these rules.

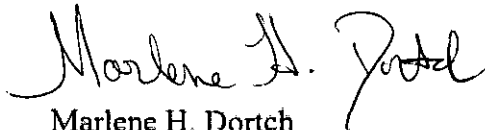
²¹¹ See 5 U.S.C. § 801(a)(1)(A).

²¹² *Id.* § 604(b).

85. IT IS FURTHER ORDERED that pursuant to the authority contained in section 1.46 of the Commission's rules, that the OCMC request for leave to file comments in the proceeding IS GRANTED.²¹³

86. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

²¹³ 47 C.F.R. § 1.46.

APPENDIX A – LIST OF COMMENTERS

Comments

American Public Communications Council
Association of Communications Enterprises, Focal
Communications Corp. & US LEC Corp.
Bulletins
CommuniGroup of K.C., Inc., et al. (Joint Switched-
Based Resellers
Global Crossing North America, Inc.
IDT Corporation
Illinois Public Telecommunications Association
OCMC, Inc.
AT&T Corp.
Qwest Communications International, Inc.
RBOC Payphone Coalition
Sprint Corporation
Telstar International, Inc. & International
Prepaid Communications Association
WilTel Communications, LLC
WorldCom, Inc.

Abbreviation

APCC

ASCENT, Focal & US LEC

Joint SBRs
Global Crossing
IDT
Illinois PTA
OCMC
AT&T
Qwest

Sprint

Telstar & IPCA
WilTel
WorldCom

Replies

American Public Communications Council
Bulletins
CommuniGroup of K. D., Inc., et al.
Global Crossing North America, Inc.
IDT Corporation
OCMC, Inc.
Qwest Communications International Inc.
RBOC Payphone Coalition
Sprint Corporation
WorldCom, Inc.

APCC

Global Crossing
IDT
OCMC
Qwest

Sprint
WorldCom

APPENDIX B - INTERIM RULES

Based on good cause found above, the following rules will take effect upon publication in the Federal Register. They will remain in effect until the final rules set forth in Appendix C become effective.

§ 64.1300 Payphone compensation obligation.

(a) Except as provided herein, the first facilities-based interexchange carrier to which a completed coinless access code or subscriber toll-free payphone call is delivered by the local exchange carrier shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract.

§ 64.1310 Payphone compensation procedures.

(a) It is the responsibility of the first facilities-based interexchange carrier to which a compensable coinless access code or subscriber toll-free payphone call is delivered by the local exchange carrier to track, or arrange for the tracking of, each such call so that it may accurately compute the compensation required by Section 64.1300(a). The first facilities-based interexchange carrier to which a compensable coinless payphone call is delivered by the local exchange carrier must also send back to each payphone service provider at the time dial around compensation is due to be paid a statement in computer readable format indicating the toll-free and access code numbers that the LEC has delivered to the carrier, and the volume of calls for each toll-free and access number each carrier has received from each of that payphone service provider's payphones, unless the payphone service provider agrees to other arrangements.

(b) The first facilities-based interexchange carrier to which a compensable coinless payphone call is delivered by the local exchange carrier may obtain reimbursement from its reseller and debit card customers for the compensation amounts paid to payphone service providers for calls carried on their account and for the cost of tracking compensable calls. Facilities-based carriers and resellers may establish or continue any other arrangements that they have with payphone service providers for the billing and collection of compensation for calls subject to Section 64.1300(a), if the involved payphone service providers so agree.

APPENDIX C - FINAL RULES

Part 64 of the Code of Federal regulations is amended as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority for part 64 remains unchanged.

2. Section 64.1300 is amended by revising paragraph (a), adding a new paragraph (b), and redesignating prior paragraphs (b) and (c) as (c) and (d) to read as follows:

§ 64.1300 Payphone compensation obligation.

(a) For purposes of this subpart, a Completing Carrier is a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call.

(b) Except as provided herein, a Completing Carrier that completes a coinless access code or subscriber toll-free payphone call from a switch that the Completing Carrier either owns or leases shall compensate the payphone service provider for that call at a rate agreed upon by the parties by contract.

3. Section 64.1310 is amended by revising paragraphs (a), (b), and (c), redesignating prior paragraphs (c), (d) and (e) as (d), (e) and (f) to read as follows, and adding a new paragraph (g):

§ 64.1310 Payphone compensation procedures.

(a) Unless the payphone service provider agrees to other compensation arrangements, each Completing Carrier identified in section 64.1300(a) shall compensate the payphone service provider as follows:

(1) Each Completing Carrier shall establish a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion..

(2) Each Completing Carrier shall pay compensation to payphone service providers on a quarterly basis for each completed payphone call identified in the Completing Carrier's quarterly report required by section 64.1310(a)(4).

(3) At the conclusion of each quarter, the chief financial officer of the Completing Carrier shall submit to each payphone service provider to which compensation is tendered a sworn statement that the payment amount for that quarter is accurate and is

based on 100% of all completed calls that originated from that payphone service provider's payphones.

(4) At the conclusion of each quarter, the Completing Carrier shall submit to the payphone service provider, in computer readable format, a report on that quarter that includes:

- (A) A list of the toll-free and access numbers dialed from each of that payphone service provider's payphones and the ANI for each payphone;
- (B) The volume of calls for each number identified in subparagraph (a)(4)(A) that were completed by the Completing Carrier; and
- (C) The name, address, and phone number of the person or persons responsible for handling the Completing Carrier's payphone compensation.
- (D) The carrier identification code ("CIC") of all facilities-based long distance carriers that routed calls to the Completing Carrier, categorized according to the subparagraph (a)(4)(A) list of toll-free and access code numbers.

(b) For purposes of this subpart, an Intermediate Carrier is a facilities-based long distance carrier that switches payphone calls to other facilities-based long distance carriers.

(c) Unless the payphone service provider agrees to other reporting arrangements, each Intermediate Carrier shall provide the payphone service provider with quarterly reports, in computer readable format, that include:

- (1) A list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls;
- (2) For each facilities-based long distance carrier identified in paragraph (b)(1), a list of the toll-free and access code numbers that all local exchange carriers have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carrier;
- (3) The volume of calls for each number identified in paragraph (b)(2) that the Intermediate Carrier has received from each of that payphone service provider's payphones, identified by their ANIs, and switched to each facilities-based long distance carrier identified in paragraph (b)(1); and
- (4) The name, address and telephone number and other identifying information of the person or persons for each facilities-based long distance carrier identified in paragraph (b)(1) who serves as the Intermediate Carrier's contact at each identified facilities-based long distance carrier.

(g) Each Completing Carrier and each Intermediate Carrier must maintain verification data to support their subparagraph (a)(4) and subparagraph (c) quarterly reports for 18 months after the close of that quarter. This data must include the time and date that each call identified in subparagraph (a)(4) and subparagraph (c) was made. This data must be provided to the payphone service provider upon request.

4. Section 64.1320 is amended by revising the Title, paragraphs (a) and (b), and by adding paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 64.1320 Payphone Call Tracking System Audits.

(a) As a precondition to tendering payment pursuant to section 64.1310(a), all Completing Carriers must undergo a system audit of their section 64.1310(a)(1) tracking system by an independent third party auditor whose responsibility shall be, using audit methods approved by the American Institute for Certified Public Accountants, to determine whether the call tracking system accurately tracks payphone calls to completion.

(b) By the effective date of these rules, each Completing Carrier in paragraph (a) must file an audit report from the auditor (the "System Audit Report") regarding the Completing Carrier's compliance with section 64.1310(a)(1) as of the date of the audit with the Commission's Secretary in CC Docket No. 96-128 and with each payphone service provider for which it completes calls and with each facilities-based long distance carrier from which it receives payphone calls.

(c) The Completing Carrier must comply with, and the third-party auditor must verify, the Completing Carrier's compliance with the following factors in establishing a call tracking system pursuant to section 64.1310(a)(1):

- (1) Whether the Completing Carrier's procedures accurately track calls to completion;
- (2) Whether the Completing Carrier has a person or persons responsible for tracking, compensating, and resolving disputes concerning payphone completed calls;
- (3) Whether the Completing Carrier has effective data monitoring procedures;
- (4) Whether the Completing Carrier adheres to established protocols to ensure that any software, personnel or any other network changes do not adversely affect its payphone call tracking ability;
- (5) Whether the Completing Carrier has created a compensable payphone call file by matching call detail records against payphone identifiers;

- (6) Whether the Completing Carrier has procedures to incorporate call data into required reports;
- (7) Whether the Completing Carrier has implemented procedures and controls needed to resolve payphone compensation disputes;
- (8) Whether the independent third-party auditor can test all critical controls and procedures to verify that errors are insubstantial; and
- (9) Whether the Completing Carriers has in place adequate and effective business rules for implementing and paying payphone compensation, including rules used to:
- (i) identify calls originated from payphones; (ii) identify compensable payphone calls;
 - (iii) identify incomplete or otherwise noncompensable calls; and (iv) determine the identities of the payphone service providers to which the Completing Carrier owes compensation.
- (d) Consistent with standards established by the American Institute of Certified Public Accounts for attestation engagements, the System Audit Report shall consist of: (1) the Completing Carrier's representation concerning its compliance; and (2) the independent auditor's opinion concerning the Completing Carrier's representation of compliance. The Completing Carrier's representation must disclose (i) its criteria for identifying calls originating from payphones; (ii) its criteria for identifying compensable payphone calls; (iii) its criteria for identifying incomplete or otherwise noncompensable calls; (iv) its criteria used to determine the identities of the payphone service providers to which the completing carrier owes compensation; (v) the identity of any clearinghouses the Completing Carrier uses; and (vi) the types of information that the Completing Carrier needs from the payphone service providers in order to compensate them.
- (e) At the time of the filing of System Audit Report with the Commission, the Completing Carrier shall file with the Commission's Secretary, and the facilities-based long distance carriers and payphone service providers identified in section 64.1320(b), a statement that includes the name of the Completing Carrier, and the name, address and phone number for the person or persons responsible for handling the Completing Carrier's payphone compensation and for resolving disputes with payphone service providers over compensation, and this statement shall be updated within 60 days of any changes of such persons.
- (f) One year after the filing of the System Audit Report, and annually thereafter, the Completing Carrier shall engage an independent third-party auditor to: (1) verify that no material changes have occurred concerning the Completing Carrier's compliance with the criteria of the prior year's System Audit Report; or (2) if a material change has occurred concerning the Completing Carrier's compliance with the prior year's System Audit Report, verify that the material changes do not affect compliance with the audit criteria set forth in subparagraph (c). The Completing Carrier must fully disclose any material changes concerning its call tracking system in its representation to the auditor. The Completing Carrier shall file and provide copies of all System Audit Reports pursuant to the procedures set forth in subparagraph (b).
- (g) Subject to protections safeguarding the auditor's and the Completing Carrier's confidential

and proprietary information, the Completing Carrier shall provide, upon request, to the payphone service provider for inspection any documents, including working papers, underlying the System Audit Report.